

**Remarks:**

**A. Status of the Claims**

Claims 33-36, 38, 39, 41, 42, 44-46, 48-52, and 54-68 were pending when the August 10, 2005, Final Office Action issued. Claims 33, 36, 39, and 55 have been amended, claims 34 and 42 have been canceled, and claim 69 has been added. Support for the amendments claims can be found throughout the specification and claims as originally filed. See, for example, page 8, lines 15-24 of the specification. Claims 33, 35-36, 38, 39, 41, 44-46, 48-52, and 54-69 are therefore currently pending.

**B. The Objection to Claim 34 Is Overcome**

Claim 34 is objected to for failing to further limit the subject matter of claim 33. Applicants note that this claim is canceled. Therefore, this objection is rendered moot and should be withdrawn.

**C. The Indefiniteness Rejection Is Overcome**

Claim 41 is rejected under 35 U.S.C. § 112, second paragraph, for lack of indefiniteness. Specifically, the Examiner contends that the recitation of “the backing sheet” in claim 41 lacks antecedent basis. Applicants note that independent claim 33 now includes “a backing sheet.” Therefore, the indefiniteness rejection is overcome and should be withdrawn.

**D. The Anticipation Rejection Is Overcome**

Claims 33-35, 44-46, 48-51, 55-62, and 65-66 are rejected under 35 U.S.C. § 102(b) as being anticipated by Evident Crimescene. The Examiner contends that this reference discloses every element of the rejected claims.

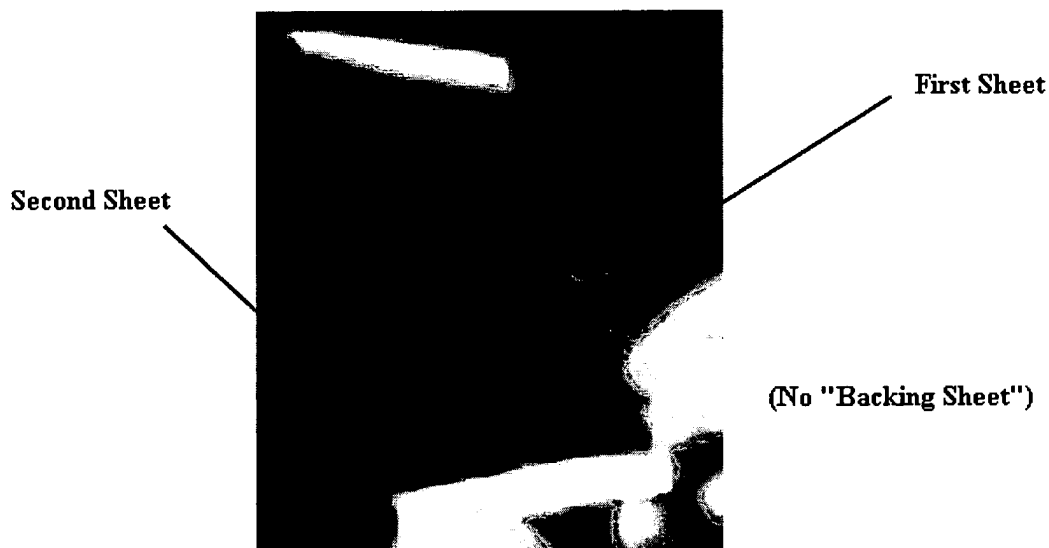
Applicants disagree. The claims prior to any amendments made above were novel over the cited reference. Further, the pending claims are novel over this reference.

Anticipation requires a showing by the Examiner that the Evident Crimescene reference discloses every element of Applicants' claimed invention. *See In re Sun*, 31 U.S.P.Q.2d 1451 (Fed. Cir. 1993); *see also Verdegaaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). This has not been done.

**1. Independent Claim 33 and Its Dependent Claims Are Not Anticipated**

Applicants note that the subject matter of claim 42, which was not subject to the current anticipation rejection, has been incorporated into claim 33. Because of this, the present anticipation rejection is rendered moot and should be withdrawn.

Additionally, claim 33 also recites, in part, "[a] storage structure comprising... a backing sheet releasably secured to the transparent polymeric sheet..." This claimed element does not appear to be disclosed in the BVDA Hinge Lifter shown in the Evident Crimescene reference. Rather, while the Lifter includes a first and second sheet, it does not include "a backing sheet" as claimed by Applicants:



Because the Evident Crimescene reference fails to disclose every element of claim 33, the present anticipation rejection cannot be maintained and should be withdrawn.

## **2. Independent Claim 55 and Its Dependent Claims Are Not Anticipated**

Independent claim 55 is not anticipated by the Evident Crimescene reference. This claim recites, in part, “[a] tamper-evident storage structure comprising...a base sheet...comprising an absorbent material that is secured to a portion of a front surface of the base sheet...a backing sheet releasably secured to the surface of the transparent cover sheet facing the base sheet...and indicia identifying the biological sample....” At least these elements do not appear to be disclosed or suggested by the cited reference.

As described above, the BVDA Hinge Lifter shown in the Evident Crimescene reference does not appear to disclose “a backing sheet.” Additionally, the above picture provides evidence that Lifter does not appear to have any “indicia identifying” a biological sample nor “an absorbent material that is secured to a portion of a front surface of the base sheet.”

Because the Evident Crimescene reference fails to disclose every element of claim 55, the present anticipation rejection cannot be maintained and should be withdrawn.

## **E. The Written Description Rejection Is Overcome**

Claims 33-36, 38-39, 41,-42, 44-46, 48-52, and 54-68 are rejected under 35 U.S.C. § 112, first paragraph, as lacking written description. Specifically, the Examiner contends that the specification does not contain a written description for the elements “the base sheet is indicia free” and “the base sheet comprising an absorbent material.”

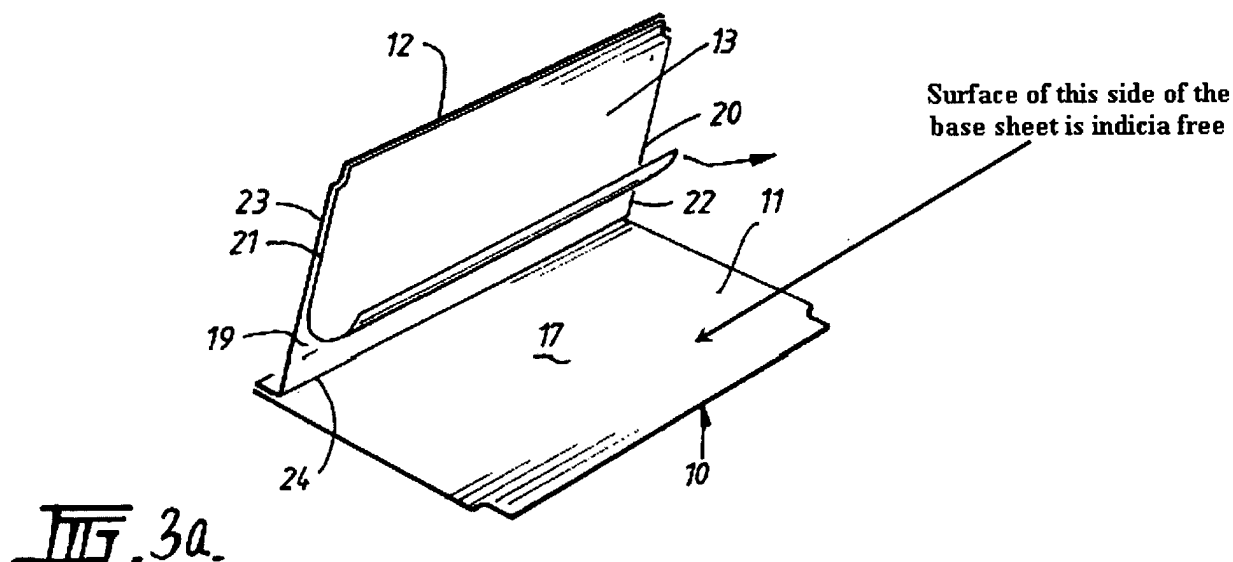
Applicants disagree. The specification contains a description of these elements that satisfies the requirements of 35 U.S.C. § 112, first paragraph.

### **1. The Specification Provides Written Description for “the base sheet is indicia free”**

The claim language at issue is actually “a side of the base sheet that is indicia free.” The specification provides written description for this language. However, in an effort to further the

prosecution in this case and secure prompt allowance, this element has been deleted from claim 33. Therefore, the present 112, first paragraph, rejection is rendered moot and should be withdrawn.

Applicants deletion of this language should not be construed as an acquiescence that the specification fails to provide a written description of this element. In fact, the specification provides an appropriate description of this element under 35 U.S.C. § 112, first paragraph. For instance, a person skilled in the art would recognize that Applicants had possession of this element by referring to FIG. 3A of the specification. See *Vas-Cath, Inc., v. Mahurkar*, 935 F.2d 1555, 1565 (Fed. Cir. 1991) (noting “drawings alone may provide a ‘written description’ of an invention as required by Sec. 112/”). An image of FIG> 3A with Applicants’ annotations is provided below:



It is clear that FIG. 3A provides a non-limiting embodiment where “a side of the base sheet that is indicia free.” This is sufficient to satisfy the written description requirement of 35 U.S.C. § 112, first paragraph. *Id.*; see also *Autogiro Co. of America v. United States*, 384 F.2d 391, 398 (Ct. Cl. 1967) (“In those instances where a visual representation can flesh out words,

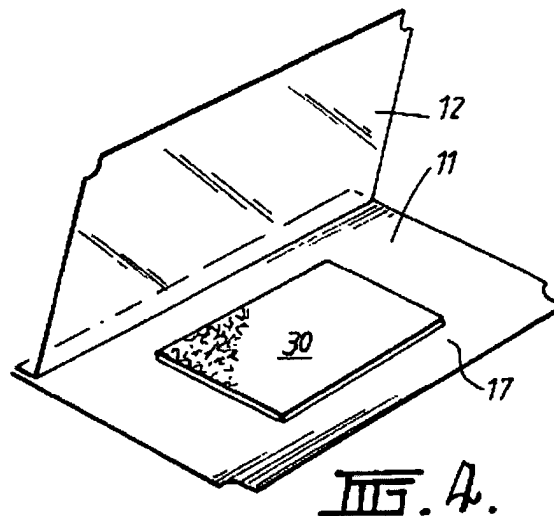
drawings may be used in the same manner and with the same limitations as the specification.”); MPEP 2163 § [II][A][3][a] (noting that “[a]n applicant may show possession of an invention by disclosure of drawings or structural chemical formulas that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole.”).

**2. The Specification Provides Written Description for “the base sheet comprising an absorbent material”**

The specification provides written description for “the base sheet comprising an absorbent material.” A person of skill in the art would recognize that the inventor had possession of this claimed element. In one non-limiting embodiment, for instance, the specification recites:

An absorbent material may be secured on the front surface of said base sheet. This makes collection of body fluids easier as a quantity of these may be absorbed by the absorbent layer. Typically the absorbent layer is blotting paper.

Specification at page 10, lines 4-8. Additionally FIG. 4 (see element “30”) provides a non-limiting example of a storage device that includes an absorbent material:



In view of the above, it is clear that the specification provides written description for “the base sheet comprising an absorbent material.” Therefore, the present written description rejection cannot be maintained and should be withdrawn.

**F. Conclusion**

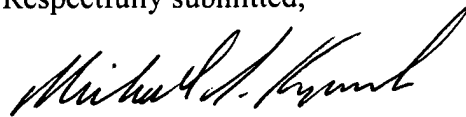
Applicants believe that the present document is a full and complete response to the August 10, 2005, Final Office Action. The present case is in condition for allowance, and such favorable action is requested.

**Petition for a Three-Month Extension of Time:**

Pursuant to 37 C.F.R. § 1.136(a), Applicants petition for an extension of time of three months to and including February 10, 2005, in which to respond to the Final Office Action dated August 10, 2005. Pursuant to 37 C.F.R. § 1.17, a check in the amount of \$510.00 is enclosed, which is the process fee for a three-month extension of time for a small entity status. If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit the appropriate fees from or to Fulbright & Jaworski Deposit Account No. 50-1212/GENS:008US.

Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants' representative at (512) 536-3020.

Respectfully submitted,



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